

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2925 of 2023

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Jairam Yadav @ Jairam Choudhary Son of Bhirgun Yadav, Resident of
Village - Kalyanpur, P.S. - Bhore, District - Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reform, Govt. of Bihar, Patna.
2. The District Magistrate-cum-Collector, Gopalganj.
3. The Additional Collector, Gopalganj.
4. The Deputy Collector, Land Reforms, Hathua, Gopalganj.
5. The Circle Officer, Circle Bhore District Gopalganj.
6. Bajrang Bali Singh, S/o Sudama Singh, resident of Village Kalyanpur, P.S. Bhore, District - Gopalganj.
7. Chandrika Yadav, son of Late Indrajeet Yadav
8. Paras Yadav, Son of Late Indrajeet Yadav
9. Vyas Yadav, Son of Late Indrajeet Yadav
10. Santosh Yadav, S/o Late Dharmdeo Yadav

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anirudh Kr. Verma, Adv.
	:	Mr. Vyas Kumar Mishra, Adv.
For the State/s	:	Mr. Rishi Raj Sinha (SC-19)
	:	Mr. Birendra Prasad Singh, AC to SC-19
For the Respondent/s	:	Mr. Md. Sufiyan, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 17-07-2023

Heard learned counsel for the petitioner, counsel
for the State and learned counsel for the private respondent No.6
who appeared *suo-moto* in this case.

2. Learned counsel for the petitioner submits that
by virtue of sale deed of the year 1929, the land bearing Plot
Nos. 3113 and 4313, Khata Nos. 61 & 62 were recorded in his

name by Mutation Case No. 2085 of 2009-10 dated 09.03.2010. Counsel submits that against the said order the respondents have preferred Mutation Appeal No. 41 of 2020-21 dated 18.03.2021 with a lapse of about 10 years, the mutation was made in favour of the petitioner was set-aside and it was ordered that the said order has to be passed by the Circle Officer, Gopalganj on the basis of possession.

3. Counsel for the respondent submits that he has challenged the said order before the Mutation Revision Case No. 14 of 2021. The said Mutation Revision was also dismissed by Collector, Gopalganj. Thereafter, the respondent preferred his case before Bihar Land Tribunal, Patna in BLT Case No. 461 of 2021, and the Bihar Land Tribunal, Patna rejected the claim of the private respondents. The Bihar Land Tribunal has observed the following:-

“5. Considered the submissions of the parties and perused Annexure-3, the copy of order passed by Ld. D.C.L.R. in Mutation Appeal Case No. 41 of 2020-21 and Annexure-5, the copy of order dated 04.08.2021 passed by Ld. Collector, Gopalganj in Mutation Revision Case No. 14 of 2021.

6. It manifests that Ld. Collector, Gopalganj vide its order at Annexure-5 has dismissed the revision at the stage of admission itself stating that petitioner has not produced any evidence to be considered at the stage of admission of the case. This order is out and out cryptic in nature. The copy of revision application filed by the petitioner has been brought on the record as Annexure-3 in which petitioner had raised all those points which were not considered by the appellate authority but the ld. Collector without applying its mind on the same dismissed the revision at the stage of admission itself. This order to my view is not at all sustainable in law.

7. It is clear that mutation order in favour of opposite parties herein was passed through Mutation Case No. 2085 of 2009-10. It is the assertion of petitioner that when he came to learn about the mutation order passed in the said case, he applied for copy of mutation order but the same was not furnished to him as the record was found not available in the office of Circle Officer. Ld.

D.C.L.R. in its order has also recorded that he called for the record of said mutation case from the Circle Office but despite repeated reminders, the record was not received to him. Thus, the appellate authority had no occasion to examine on what basis the mutation was created in favour of opposite parties. It is the claim of opposite parties that the ancestor of petitioner had sold out the land of Khata No. 61, Plot No. 3113 and of Plot No. 2817 of total area 13 katha 14 dhur to the ancestor of opposite parties through sale deed dated 10.06.1929. It is also the submission of opposite parties that in the said deed of sale, Plot No. 4313 was wrongly mentioned in place of 2817 but its boundary was correctly mentioned in the deed. No copy of such deed has been brought before me. It is most surprising that alleged sale deed got executed in 1929 and since then opposite parties or their ancestors never took any step for mutation of those lands in their favour as no chit of paper has been filed to show that earlier at any point of time, land in question was got mutated in their favour or

their ancestors. It is clear that mutation of the land in question was running in the name of Thakur Koiri and there is nothing in the order passed by the appellate authority to show that before passing the order by the Circle Officer whether any khas notice was issued to the jamabandi raiyat or not. Petitioner herein claimed that he has been all along in possession of the land in question and the appellate authority has not recorded any finding as about the possession and since, the record of said mutation case is not available so, it is not becoming clear whether before passing the order on mutation, Circle Officer ascertained the physical possession of the land in question or not. In these facts and circumstances, the order passed by D.C.L.R, Hathua can not be allowed to sustain in law.

8. In view of the discussions aforesaid, this Tribunal concludes that both the orders passed by the appellate authority and revisional authority are not sustainable in law hence, they are set aside and the matter is remitted back to the D.C.L.R.,

Hathua, Gopalganj to pass order afresh after hearing both the sides and after ascertaining the physical possession of the land in question by conducting an enquiry by himself in presence of both the sides. This case is thus allowed. Let send the copy of this order to the D.C.L.R. concerned for information and needful action in the matter with direction to conclude the proceeding at the earliest preferably within a period of six months from the receipt of the copy of this order. ”

4. The private respondent submits that even after repeated efforts the record of Mutation Case No. 2085 of 2009-10, by which land was recorded in the name of the petitioner is not available before the Circle Officer, Gopalganj.

5. Counsel submits that *Jamabandi* of the said lands were recorded in *Jamabandi* no. 57 and 58 and the basic document on the basis of which the mutation was made in favour of the petitioner was of the year 1929 and for the first time it was mutated in the year 2009-10. In the said mutation case no notices were ever served upon the private respondents.

7. Counsel further submits that the only order made by the Tribunal is to remand the matter and decide this case in

the light of Rule No. 5 of the Bihar Land Mutation Rules, 2010 (Amended Rule, 2017). Direction has also been made by the Bihar Land Tribunal to conclude the proceedings at the earliest preferably within 6 months on the receipt of copy of this order.

8. As such, this Court is of the view that there is no need to interfere with the order passed by the Bihar Land Tribunal, Patna.

9. Let the Deputy Collector Land Reform, shall pass a fresh order in the light of Bihar Land Mutation Rules, 2010 (Amended Rule, 2017) mutation rule after provided opportunities to all the parties who are related to this case.

10. Accordingly, with the aforesaid direction the present writ petition stands dismissed.

(Dr. Anshuman, J.)

Ashishsingh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.07.2023
Transmission Date	NA